



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 20 - 0026
JAN 22 2020

**REQUEST FOR CLOSED SESSION PURSUANT TO
GOVERNMENT CODE SECTION 54956.9(d)(1)**

REPORT RE:

SETTLEMENT DISCUSSION

**HELLER CASTILLO v. CITY OF LOS ANGELES, ET AL.
LASC CASE NO. BC637871**

The Honorable Claims Board
City of Los Angeles
Room 1070, City Hall
200 North Spring Street
Los Angeles, California 90012

(Re: Claim No. C16-05407)

Honorable Members:

This office recommends that discussions with, and advice from, legal counsel regarding the recommendation for Claims Board action in this pending litigation be scheduled and held in closed session pursuant to California Government Code Section 54956.9(d)(1). Government Code Section 54956.9(d)(1) requires you to state publicly prior to the closed session, what subdivision of this section authorizes the closed meeting, and that the closed session is being held to confer or discuss with, or receive advice from, legal counsel regarding pending litigation.

The Honorable Claims Board
City of Los Angeles
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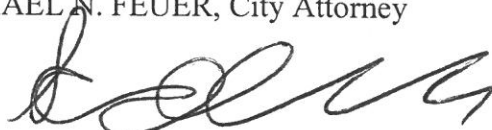
This matter arises from an incident involving members of the Los Angeles Police Department on April 27, 2016, in Los Angeles, California.

If you have any questions regarding this matter, please contact Lisa Lee at (213) 978-7032. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

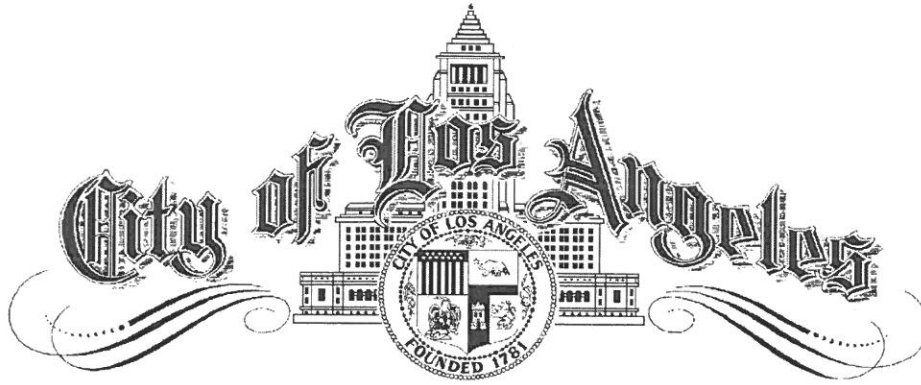
By



SCOTT MARCUS
Senior Assistant City Attorney

SM:if

cc: Richard M. Tefank, Executive Director, Board of Police Commissioners
Eileen Decker, President, Board of Police Commissioners
Michel R. Moore, Chief of Police
Lizabeth Rhodes, Director, Office of Constitutional Policing & Policy
Bryan D. Lium, Captain, and Alex Medel, Lieutenant, Legal Affairs Division



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 20 - 0026

JAN 22 2020

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

**REQUEST FOR CLOSED SESSION PURSUANT TO
GOVERNMENT CODE SECTION 54956.9(d)(1)**

CONFIDENTIAL REPORT RE:

RECOMMENDATION FOR SETTLEMENT

HELLER CASTILLO v. CITY OF LOS ANGELES, ET AL.
LASC CASE NO. BC637871

The Honorable Claims Board
City of Los Angeles
Room 1070, City Hall
200 North Spring Street
Los Angeles, California 90012

(Re: Claim No. C16-05407)

Honorable Members:

It is respectfully requested that the City Attorney's Office be authorized to make a California Code of Civil Procedure § 998 Statutory Offer of Compromise (Offer of Judgment) in the amount of \$75,000 in the above-entitled matter from the Liability Claims Fund 100/59, Account 009798, Miscellaneous Liability Payouts. Although it is anticipated that Plaintiff will not accept an offer of \$75,000, we believe that we should make the offer as a tool to encourage settlement. If the offer is accepted, the demand drawn on said fund shall be as follows: made payable to Law Office of John H. Oh & Associates, P.C., and Heller Castillo, in the amount of \$75,000.00. Plaintiff's current demand is \$800,000.00.

It is also respectfully requested that the City Attorney, or designee, be authorized to make necessary technical adjustments, subject to the approval of the City Administrative Officer, and that the Controller be authorized to implement the instructions.

SUMMARY OF THE FACTS:

On April 27, 2016, gang members armed with firearms led Metropolitan Division officers on a foot pursuit. A one block perimeter was established and a K-9 Officer responded with his police dog per a request by Metropolitan Division officers to assist them in locating an outstanding armed suspect contained in the established perimeter.

Prior to starting the K-9 search, announcements were given in English and Spanish from a police vehicle public address system. All announcements were confirmed by officers at the edges of the perimeter. Plaintiff Castillo's residence was located within the perimeter. An armed suspect was subsequently located and taken into custody.

During the search, the K-9 police dog alerted on the door of a converted garage within the perimeter. Plaintiff Castillo, who resided inside, opened the door when he thought he heard scratching and knocking at the door. As the door suddenly opened inwardly, the K-9 police dog partially entered the door. The K-9 officer immediately recalled the police dog to his side and secured him with a leash. Plaintiff Castillo exited the structure and advised that he had been bitten by the K-9 police dog.

Officers escorted Plaintiff Castillo out of the perimeter and immediately called for medical care. An LAFD Rescue Ambulance responded and treated Castillo for scratches to his chest, right arm, left ankle and shin. Castillo was then transported to Kaiser Hospital where he was examined and treated for the above listed injuries and released. The Kaiser records indicate the cause of injury as "dog bite."

The Kaiser ER records show that Plaintiff complained of a dog bite to the chest, but did not complain that he hit his head. Plaintiffs' other injuries were superficial. The Kaiser doctor

Two weeks later, Plaintiff filed a Claim for Damages with the City claiming that his injuries were multiple dog bites, as well as hearing loss. Five months later on September 27, 2016, Plaintiff saw a neurosurgeon complaining of tinnitus, buzzing and hearing loss in his right ear. For the first time, Plaintiff complained that during the K9 incident, he fell backwards and struck the back of his head on the door jam and wall when the police dog jumped on him.

At deposition, Plaintiff admitted that he was aware the police were searching the area for a suspect, as he heard police activity and helicopters. Plaintiff claims that he saw officers outside of his residence with guns drawn, and when he heard the scratching or knocking at his

door, he thought the officers wanted him to come outside, and he was afraid that if he did not, the officers would harm him.

LIABILITY:

California Civil Code §3342 imposes strict liability for non-suspect K-9 police dog bites. We believe that given the strict liability imposed by California Civil Code §3342, and the facts of this case, a jury would almost certainly find in favor of the Plaintiff.

Although it is anticipated that Plaintiff will not accept an offer of \$75,000, we believe that we should make a California Code of Civil Procedure § 998 Statutory Offer of Compromise (Offer of Judgment) as a tool to encourage settlement.

Pursuant to Code of Civil Procedure, section 998, an offer of judgment can be made to the plaintiff that would allow judgment to be entered in his favor and against the City of Los Angeles, on terms specified in the offer. The offer recommended would be to allow judgment be entered against the City of Los Angeles in the amount of \$75,000. This amount includes the plaintiff's costs accrued to date. The offer would specify that it does not constitute an admission of liability by or on behalf of the City, and that the City expressly denies liability.

Acceptance of the Code of Civil Procedure, section 998 offer would also act to release and discharge the City from any and all claims that were or could have been alleged by the plaintiff arising out of this incident.

If the plaintiff rejects the Code of Civil Procedure, section 998 offer, the plaintiff risks not being able to recover his costs incurred after the date the offer was made. If the plaintiff succeeds at trial (which is probable in this case), but the verdict and the plaintiff's costs as of the date of the offer combined are *less than* the Code of Civil Procedure, section 998 offer, the plaintiff would be precluded from recovering any costs incurred after the date of the offer. The plaintiff would only be able to recover costs up to the date the offer was made. Defendants also could recover all *post*-offer costs (but not attorney's fees) from the plaintiff. Thus, we believe that offering to settle the case for \$75,000 is in the best interest of the City.

DAMAGES:

The City retained Dr. William H. Slattery, M.D, a hearing and auditory expert, to conduct an Independent Medical Legal Examination of Plaintiff on October 15, 2018. Dr. Slattery personally interviewed the Plaintiff, reviewed all medical records provided, and performed objective hearing tests. Dr. Slattery diagnosed Plaintiff with mild to moderate right sensorineural hearing loss with poor speech discrimination in the right ear. Dr. Slattery opined that this type of hearing loss is consistent with Plaintiff hitting his head during a fall. Plaintiff

claims he did not have any hearing loss or injury prior to this incident, and no records have been found to show otherwise.

Dr. Slattery further opined that this injury is a permanent one and that the only treatment is for Plaintiff to use hearing aids for life.

Other than the hearing loss, Plaintiffs' other claimed dog bite injuries are superficial.

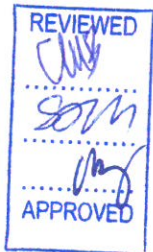
PROCEDURAL HISTORY:

The parties participated in the state court's Mandatory Settlement Conference program on July 17, 2019. Plaintiff's demand was \$175,000 at that time, and the matter did not settle. The parties participated in private mediation on October 24, 2019. Plaintiff at this time demanded \$800,000, and the matter did not settle. The mediator indicated that the huge increase in the demand was a surprise to Plaintiff's counsel, and that it appeared Plaintiff may have been influenced by a third party sometime immediately prior to the mediation.

RECOMMENDATION:

Based on the facts and the injuries alleged, we recommend that we be authorized to make a 998 offer to settle this matter in its entirety in the amount of \$75,000.


If this Honorable Body approves the above recommendation, the demands shall be made payable as set forth in the first page of this letter. This Office will obtain the necessary release and dismissal of the above-referenced action before forwarding the demands to the plaintiff's attorneys.



Very truly yours,

MICHAEL N. FEUER, City Attorney
SCOTT MARCUS, Chief Assistant City Attorney
CORY M. BRENTÉ, Senior Assistant City Attorney

By


LISA W. LEE
Deputy City Attorney

LWL:if

cc: Richard M. Tefank, Executive Director, Board of Police Commissioners
Eileen Decker, President, Board of Police Commissioners
Michel R. Moore, Chief of Police
Lizabeth Rhodes, Director, Office of Constitutional Policing & Policy
Bryan D. Lium, Captain, and Alex Medel, Lieutenant, Legal Affairs Division

City Council policy requires appropriate departmental personnel to attend Claims Board, Committee and City Council meetings each time a settlement or judgment on litigation is discussed to report remedial actions taken as the result of the litigation.